U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W. MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H2

DATE: DEC 0 8 2012 Office: CALIFORNIA SERVICE CENTER FILE [redacted]

IN RE: Applicant [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted but the underlying application remains denied.

The applicant is a native and citizen of Cuba who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO found that the applicant was convicted of a violent or dangerous crime; and he established that his spouse and child would experience exceptional and extremely unusual hardship if they remained in the United States, but not if they relocated to Cuba. The AAO dismissed the appeal accordingly.

On motion, counsel states that the applicant has been in the United States for over thirty years; his last criminal conviction was in 1990; he does not have to demonstrate exceptional and extremely unusual hardship to his family; the AAO ignored the fact that the former president of the United States identified Cuba as a nation that fosters terrorism, the State Department condemns Cuba for human rights abuses and the United States restricts travel to Cuba. Counsel states that documentary evidence is being submitted that demonstrates exceptional and extremely unusual hardship to the applicant's family if they relocate to Cuba.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Counsel has submitted new evidence on motion. This new evidence includes a U.S. Department of States Cuba Country Specific Information report, an Amnesty International article on Cuba, a Human Rights Watch Report on Cuba, the 2002 State of the Union Address transcript and a BBC article. Based on this new evidence, the AAO finds that the applicant has met the requirements for a motion to reopen.

The AAO notes that the applicant is not challenging the AAO's finding of inadmissibility, therefore, those findings will not be discussed in this decision.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> . . .
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives here are the applicant's U.S. citizen spouse, father and sons. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

8 C.F.R. § 212.7(d) states:

> The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

We consider the applicant's convictions for burglary (occupied dwelling) and aggravated battery violent or dangerous crimes under 8 C.F.R. § 212.7(d). Accordingly, the applicant must, at a minimum, show that "extraordinary circumstances" warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. In the absence of any other extraordinary circustances, counsel's claim that the applicant does not have to establish exceptional and extremely unusual hardship is incorrect.

In its initial decision, the AAO found that the applicant's spouse and child would endure "exceptional and extremely unusual hardship" if they remained in the United States without the applicant. No new arguments are made in regard to the applicant's father remaining in the United States. Therefore, the AAO will only address whether his qualifying relatives would experience "exceptional and extremely unusual hardship" upon relocation to Cuba.

The AAO notes previously made claims regarding the applicant's spouse having diabetes and one the applicant's sons receiving special instruction for school. The AAO notes that there is no documentation of her medical claims or that she could not receive care in Cuba, or that the applicant's son currently needs special instruction and that it would not be available in Cuba.

Counsel previously asserted that the applicant escaped from Cuba and would face life repression there; he would not be able to find a place to live or work and his liberty would be at risk due to his long-term residence in the United States; the United States recognizes Cuba as a violator of human rights, and for that reason enacted the Cuban Adjustment Act so as to assist victims of the Cuban regime, and that the United States currently bans travel to Cuba. On motion, counsel has submitted evidence of country conditions in Cuba. The information reflects that there are serious human rights issues in Cuba, Cuba is a totalitarian police state, the security environment in Cuba is relatively stable and the majority of crime in Cuba is non-violent. The AAO notes that the general country conditions in Cuba may result in difficulty for the applicant's qualifying relatives. However, the record does not include sufficient evidence to establish that they would not be able to reside there and that they would experience exceptional and extremely unusual hardship upon relocation to Cuba. As the applicant has not established exceptional and extremely unusual hardship, no further discussion of discretionary factors is necessary.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. The previous decisions of the director and the AAO will be affirmed.

ORDER: The motion is granted but the previous decisions of the director and the AAO are affirmed.